in the present case in requiring bail of $150,000 in one surety. A charge under s 402(1)(c) of the Companies Act is a grave one. In this case it concerns furnishing misleading statements to the Securities Industry Council with intent to deceive. It carries a penalty of a fine not exceeding $10,000 or imprisonment for a term not exceeding two years or both. Furthermore the appellant is not a local citizen. For these reasons the appeal was dismissed.

Appeal dismissed.

Solicitors: *Warren Khoo & Co.*

Reported by *Terence Tan Bian Chye*

Management Corp Strata Title No 1124 v Teh Poh Hwa & Ors

HIGH COURT (SINGAPORE) - APPEAL IN DC SUIT NO 5313 OF 1988
AP RAJAH J
4 APRIL 1989

Land Law - Landlord and tenant - Tenant sought to be evicted - Whether new owner was landlord - Tenancy by estoppel - Tenant exercising option to renew lease - Whether exercise of option performed in time

Evidence - Burden of proof - Tenant bore burden to prove timely exercise of option

The developer of a building had rented out a part of it to the first defendant for a period of two years with an option to renew for a further one year. The plaintiff later took over the management of the building and, after the expiry of the first defendant's two-year lease, sought to evict the first defendant and the other occupants of the premises as trespassers. The first defendant in her defence stated that she only had a legal relationship with the developer and not the plaintiff. She also claimed that she had exercised her option to renew by a notice to the plaintiff. The plaintiff sought to obtain an O 14 judgment against her. The deputy registrar who heard the matter gave the first defendant unconditional leave to defend. The plaintiff appealed.

Held, allowing the appeal:

(1) The first defendant had paid rent to the plaintiff for a period of time during the lease and documents evidence this fact. The first defendant was therefore estopped by attornment from disputing the plaintiff's title. She had by her act put the plaintiff in place of the developer as her landlord.

(2) The first defendant's notice of the exercise of the option to renew was only received after the time allowed. The tenancy agreement required that she send the notice by registered post. It was for her to prove her allegation that she had sent the notice by registered post before the deadline and she had failed to do so. The decision of the registrar was therefore set aside and judgment was given for the plaintiff. Costs of the action there and below to the plaintiff.

[*Editorial Note*: The plaintiff has appealed to the Court of Appeal vide Civil Appeal No 24 of 1989.]

Legislation referred to
Evidence Act (Cap 97, 1985 Ed)

Chew Teck Lim for the plaintiff/appellant.
SK Chua for the first defendant/respondent.

Cur Adv Vult

AP Rajah J: The plaintiff, the Management Corporation Strata Title No 1124, came into being when the strata title plan was registered on 8 July 1986. Prior to the formation of the said Management Corporation Textile Development Pte Ltd, the developer was in charge and was responsible for the maintenance and management of the common areas. The management of the common property was actually taken over by the plaintiff on or about 29 November 1986 after the first annual general meeting pursuant to the provisions under the Land Titles (Strata) Act (Cap 158).

The plaintiff, which comprises all the subsidiary proprietors as tenants in common in shares proportionate to the share value of each unit are and were at all material times the owners of part of the common property described as #08-04, Macpherson Industrial Complex, Singapore 1334 (hereinafter referred to as 'the said premises'). The said Textile Development Pte Ltd as agent for and on behalf of the plaintiff, by an agreement dated 1 August 1986 let to the first defendant as tenant the said premises for a term of two years from the first day of August 1986 at a monthly rent of $1,200 payable in advance on the first day of each calendar month and thereafter in the event of the tenant exercising the option as stipulated in cl 6 for a further term of one year. Clause 6 of the agreement reads as follows (encl 8 exh LLH-2 p 9):

> 6 And for further consideration the landlord hereby grants the tenant an option to renew this tenancy to the demised premises for a further period of one year on the same terms and conditions with the exception of rental which is to be negotiated accordingly. The tenant shall exercise this option in writing three (3) months before the expiring of the term hereby created.

The plaintiff claims that the defendant not having given proper notice for the extension of the tenancy, the said term expired by effluxion of time on 1 August 1988 yet the first defendant has thereafter remained and now remains in occupation of the premises together with the other occupants as trespassers. The defendant's two defences are set out in paras 6 to 9 of her affidavit filed on 30 November 1988 (encl 9).

First defence: In para 6 of her affidavit she says that 'the only legal relationship I have in terms of this tenancy is with Textile Development Pte Ltd'. In answer to this the plaintiff says (encl 12 para 2) that the defendant had

since January 1987 to the expiration of the term been continuously paying the same rental to the plaintiff in accordance with the terms and conditions under the said tenancy agreement. There is now produced and shown to me a copy of the debit note and a copy of the official receipt both from the plaintiff to the defendant collectively marked 'LLH-3'. The defendant is therefore estopped by attornment from disputing the plaintiff's title. The defendant had by her act put the plaintiff in place of the Textile Development Pte Ltd as her landlords on the terms and conditions contained in the said tenancy agreement. I found there was no substance in the first defence.

Second defence: In para 8 of the said affidavit she says:

> Under the said clause (meaning cl 6), the tenant must exercise this option in writing three months before the expiry of the initial period. By cl 7 of the agreement, the requisite notice shall be deemed sufficiently served if sent to the landlord by registered post.

The notice relied upon by the defendant is dated 4 April 1988 (encl 8 exh LLH-1) but the plaintiff says this notice was received by them only on 18 May 1988. They further say that the defendant, having postdated the notice to April 1988 so that she could be within the three-month period only posted the letter on or about 11 May 1988 (see affidavit of Syed Ali Bin Syed Mohamed, a postal clerk attached to the People's Park postal agency (encl 11)).

Under cl 7 of the agreement any notice to the landlords is to be sent by the tenant to them by registered post to the address of the landlords. It was for the defendant to prove her allegation that she had sent the notice exercising the option for a further one year on 4 April 1987 as claimed by her. In my view the defendant had not proved that she had sent the notice by registered post on 4 April as claimed by her. She did not produce in evidence the Post Office registration slip which could have evidenced that she had sent the notice on 4 April as claimed for her. Such failure to produce under the Evidence Act was against her. In addition the evidence of the said postal clerk went against her. I therefore set aside the decision of the deputy registrar and gave judgment for the plaintiff on their O 14 summons.

Appeal allowed.

Solicitors: *Shyam & Chew; SK Chua &Peter Low.*

Reported by *Terence Tan Bian Chye*

Tropicon Contractors Pte Ltd v Lojan Properties Pte Ltd

HIGH COURT (SINGAPORE) - SUIT NO 2423 OF 1987
THEAN J
18 MAY 1989

Contract - Building contract - Interim certificates - Whether revised certificates to replace original certificates valid - Delay certificate - Whether valid - Set-off against amounts owed under certificates - Liquidated damages for late completion - Payments to sub-contractors by developer after contractor's failure to do so - Costs of rectification - Loss of rental due to completion delay - Potential liability for further defects - Rules of Supreme Court 1970, O 14 - Arbitration Act (Cap 10, 1985 Ed), s 7 - Singapore Institute of Architects Standard Form cll 1(7), 22(1), 23(1), (2), (3), 24(1), (2), 29, 30(1), (2), 31(1), (2), (4) & (11)

Civil Procedure - Summary judgment - Payment under interim certificates to be enforceable by summary judgment - Whether set-off allowed against payment

The plaintiffs are building contractors and the defendants are building owners. They entered into a contract whereby the plaintiffs undertook the construction of a condominium development ('the project'). This contract ('the contract') which was in writing, adopted the standard form of the Singapore Institute of Architects. Under the contract, the date of completion was 14 May 1984. (All future references to clauses are to clauses in the contract). The contract was not completed by the completion date and the plaintiffs applied to the architects in charge of the project ('the architects') for an extension of time, but this request was rejected. During the whole period, the architects had issued interim certificates to certify the work done ('the certificates') which authorized the plaintiffs to be paid within 21 days of the receipt of the certificates by the defendants. Payment under 12 of the certificates had not been made. Following unsuccessful attempts to resolve the defendants' refusal to pay the certified payments, the plaintiffs instituted the present proceedings for the sum of $1,785,294.32 and interest thereon. After the writ had been served on the defendants, they took out an application for a stay of all further proceedings on the ground that the parties had agreed to refer the matter to arbitration. The plaintiffs had at the same time applied for summary judgment. These two applications were heard by a senior assistant registrar who dismissed the plaintiffs' application and allowed the defendants' application. This decision was appealed against. Before the senior assistant registrar had heard the applications, the architects had 'cancelled' the original interim certificates issued and purported to issue revised interim certificates which reduced the amounts payable to the plaintiffs by amounts equal to liquidated damages in respect of late completion of the contract by the plaintiffs. Also, a new interim certificate no 29 was issued. In addition, the architects issued certificates under cl 1(7) and under cl 30(2) stating that the defendants were entitled to deduct from the amounts owing to the plaintiffs moneys paid by the defendants for rectification work which the plaintiffs had failed to perform and moneys paid to nominated sub-contractors by the defendants which the plaintiffs had failed to pay. At the appeal, the defendants argued that the revised interim certificates were valid and that the defendants were entitled to the defences of set-off and counterclaim in respect of sums owed as liquidated damages for late completion, costs of rectification work, payments made to sub-contractors, loss of rental due to delay and poor workmanship and potential liability for further defects.